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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,247	01/17/2001	Thomas C. Bressoud	1-1-1-1	5905

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EXAMINER

PHILLIPS, HASSAN A

ART UNIT	PAPER NUMBER
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2151

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/764,247	Applicant(s) BRESSOUD ET AL.	
	Examiner Hassan Phillips	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to communications filed January 3, 2006.

Claim Objections

2. Examiner acknowledges amendments made to claims 30 and 37 to correct minor informalities. The objections to claims 30 and 37 stand however since Applicant has failed to correct all minor informalities in the claims (i.e. line 13 in claim 30, and line 12 in claim 37 still recite "based on least"). Appropriate correction is required.

3. In considering the amendments made to claim 35, and in light of Applicant's remarks, Examiner has withdrawn the objection to claim 35.

4. In considering the amendments made to claim 36, and in light of Applicant's remarks, Examiner has withdrawn the objection to claim 36.

Response to Arguments

5. Applicant's arguments filed January 3, 2006 have been fully considered but they are not persuasive. Applicant argued that:

- a) Ma does not teach a method of recovery from a failure of a server to a client that does not need to interpose a proxy or intermediary between the client and server;

- b) Ma fails to teach responding to the client on behalf of the server by wrapping layers, nor responding without the need of a second server;
- c) Lu does not teach wrapping layers as taught by the present claimed invention; and,
- d) There is no motivation to combine the teachings of Ma with Lu.

Examiner respectfully disagrees with Applicant's assertions.

6. Regarding item a), Examiner submits that features upon which applicant relies (i.e., "a method of recovery from a failure of a server to a client that does not need to interpose a proxy or intermediary between the client and server") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the claims Applicant recites "...restoring a state of connection associated with the connection-oriented layer prior to the failure, based on at least, in part, on the connection state information received from the wrapping layers, wherein restoring the state of connection associated with the connection-oriented layer is invisible to the client." As indicated in previous actions, Ma teaches restoring a state of connection associated with the connection-oriented layer prior to the failure, based at least, in part, on the connection state information received from the proxies, wherein restoring the state of connection associated with the connection-oriented layer is invisible to the client, (Ma, col. 4, lines 36-67). Examiner

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has interpreted the proxies taught by Ma to be the wrappers in the instant application since they are being used to perform similar functions to Applicant's claimed invention.

7. Regarding item b), Examiner maintains Ma teaches responding to the client on behalf of the server by the proxies based at least, in part, on the logged connection state information, (Ma, col. 4, lines 36-53). As previously indicated, Examiner has interpreted the proxies taught by Ma to be the wrappers in the instant application since they are being used to perform similar functions to Applicant's claimed invention.

8. Regarding item c), Examiner utilized the teachings of Lu to demonstrate wrappers were well known in the art at the time of the present invention. Examiner submits it is thus irrelevant whether Lu teaches wrapping layers as taught by the present claimed invention.

9. Regarding item d), in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as previously mentioned, the teachings of Lu were utilized to demonstrate knowledge

generally available to one of ordinary skill in the art. Furthermore, Lu teaches wrappers being interposed between a network layer (54) and a connection-oriented layer (58), (col. 17, lines 39-48, Fig. 5). Examiner thus maintains, if not implicit in the teachings of Ma, given the teachings of Lu it would have been obvious to a person of ordinary skill in the art to disclose the proxies as wrappers and have second wrappers interposed between the network layer and the connection-oriented layer. Similar to the teachings of Ma this also would have advantageously provided a means for making server failures transparent to a client (Ma, col. 2, lines 24-46), while providing layers that would prevent modification of the connection-oriented protocol layer (Lu, col. 17, lines 48-63).

10. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. The rejections are thus sustained. Applicant is requested to review the prior art of record for further consideration.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 30-37, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma et al. (hereinafter Ma), U.S. Patent 6,018,805, in view of Lu et al. (hereinafter Lu), U.S. Patent 6,351,487.

13. In considering claims 30 and 37, Ma teaches a method and system for recovering from a failure of a server to a client, comprising: using proxies (108, 118) to intercept communications to a connection-oriented protocol layer (104, 114), the communications originating from a process layer (98, 96) of a layered communications framework, wherein the proxy is interposed between the process layer and the connection-oriented protocol layer, (col. 3, line 53-col. 4, line 3); logging intercepted communications and connection state information associated with intercepted communications received from the proxies, (col. 4, lines 36-46); determining when a connection with the server fails, (col. 4, lines 22-35); responding to the client on behalf of the server by the proxies based at least, in part, on the logged connection state information, (col. 4, lines 36-53); and restoring a state of connection associated with the connection-oriented layer prior to the failure, based at least, in part, on the connection state information received from the proxies, wherein restoring the state of connection associated with the connection-oriented layer is invisible to the client, (col. 4, lines 36-67).

Although the teachings of Ma disclose substantial features of the claimed invention, they fail to expressly disclose: the proxies being wrappers, and second wrappers interposed between the network layer and the connection-oriented layer.

Nevertheless, Lu teaches wrappers (60, 64) were well known in the art at the time of the present invention (col. 17, lines 39-48). Furthermore, Lu also teaches wrappers being interposed between a network layer (54) and a connection-oriented layer (58), (col. 17, lines 39-48, Fig. 5).

Thus, given the teachings of Lu it would have been obvious to a person of ordinary skill in the art to disclose the proxies as wrappers and have second wrappers interposed between the network layer and the connection-oriented layer. Similar to the teachings of Ma this also would have advantageously provided a means for making server failures transparent to a client (Ma, col. 2, lines 24-46), while providing layers that would prevent modification of the connection-oriented protocol layer (Lu, col. 17, lines 48-63).

14. In considering claim 31, Ma teaches the connection-oriented layer being a Transmission Control Protocol layer, (col. 4, lines 15-21, Fig. 3).

15. In considering claim 32, Ma teaches the network layer being an Internet Protocol layer, (col. 4, lines 15-21, Fig. 3).

16. In considering claim 33, Ma teaches the process layer being an Application layer, (col. 3, lines 53-56, Fig. 3).

17. In considering claim 34, Ma teaches the logging of the intercepted communications and connection state information being performed on a processor separate from a processor executing the server, (col. 4, lines 36-46, Fig. 4).

18. In considering claim 35, Lu teaches a south side wrapper, (col. 17, lines 39-48, Fig. 5). One of ordinary skill in the art would combine the teachings of Lu with Ma for the same reasons indicated in considering claim 30.

19. In considering claim 36, the teachings of Ma provide a means for the proxies to be a north side wrappers, (col. 3, line 57-col. 4, line 3, Fig. 3).

Conclusion

20. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/
3/21/06


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER